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JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 868

ALONZO BULLOCK, ET AL,
Petitioners,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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ALONZO BULLOCK, ET AL,
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versus

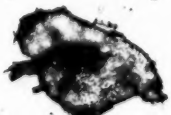
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

OPINIONS BELOW.

In *McSwain, et al v. County Board of Education of Anderson County, Tennessee, et al., 138 F. Supp. 570,* an order was issued requiring racial integration in the Clinton, Tennessee, High School. After this decision,



an injunction was issued in that cause on August 29, 1956, against interferring with the carrying out of the order. Thereafter, on February 25, 1957, an order of attachment was issued charging petitioner and others with a conspiracy to violate said order.

Petitioners here were convicted of criminal conspiracy before Judge Robert L. Taylor of the United States District Court for the Eastern District of Tennessee. No opinion was reported.

The United States Court of Appeals for the Sixth Circuit, on appeal of this cause, affirmed the convictions, classing them as convictions of criminal contempt, the style of the case being *Alonzo Bullock, et al. vs. United States of America, No. 13,512*, opinion dated February 27, 1959, not yet reported in the Advance Sheets of the Federal Reporter.

JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit, to review which this petition for certiorari is filed, is dated February 27, 1959.

The petition for extension of time for filing a petition for certiorari was filed within thirty days thereafter, and the time for filing such petition for certiorari was extended by Justice Potter Stewart to and including April 28, 1959, by order dated March 23, 1959.

The District Court had jurisdiction to convict petitioners for criminal conspiracy under USCA Title 18, Sec. 401(3),

and this Court has jurisdiction to grant a writ of certiorari under USCA Title 28, Sec. 1254(1).

QUESTIONS PRESENTED FOR REVIEW.

QUESTION I. Was it not prejudicial error for the District Court to amend the original order of attachment that charged certain individuals, but not the petitioners herein, with certain specific acts alleged to have been violative of the injunction and then by amendment thereto adding new grounds and charging these defendants with criminal conspiracy in violating said injunction, thereby changing the cause of action without notice to any of these defendants?

QUESTION II. Was it not reversible error for the District Court to refuse to counsel for defendants under the *Jencks* case prior to trial on request the right to the production of all statements of witnesses bearing on testimony which might be given by government witnesses?

QUESTION III. Was it not reversible error for the District Court to refuse to instruct the jury to the effect that the Government having alleged an agreement or agreements between Kasper and each of the other defendants during the months of November and December 1956, was required by law to prove said agreement or agreements beyond a reasonable doubt and to a moral certainty?

QUESTION IV. Was it not reversible error for the lower court to instruct the jury that Rev. Turner's action was a "good deed" in the face of defendants' contention that it was a bad deed, and when that question of fact was an issue for the jury to decide?

QUESTION V. Was it not reversible error for the District Court to refuse to instruct the jury to the effect that the real parties in interest, the negro students, not having been called by the government to testify, the jury could properly conclude that their testimony would have been unfavorable to the interest of the government?

QUESTION VI. Was it not prejudicial and reversible error for the trial court to allow or permit the court below to issue to each member of the jury panel a pamphlet entitled "Handbook for jurors serving in the United States District Courts"?

QUESTION VII. Was the jury tampered with, and did this constitute prejudicial and reversible error?

The District Court decided each of the above questions in the negative, and its decision was affirmed by the Court of Appeals.

STATUTES INVOLVED.

USCA Tit. 18, Sec. 401, reads as follows:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

"(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) Misbehavior of any of its officers in their official transactions;

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

CONSTITUTIONAL PROVISIONS INVOLVED.

Amendment VI of the Constitution of the United States reads as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense."

Amendment XIV of the Constitution of the United States reads in part as follows:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT.

This litigation began as a suit by Joheather McSwain, et al., against County Board of Education of Anderson County, Tennessee, et al., (R1a). On January 4, 1956, the District Court entered an order requiring and directing the discontinuance of racial segregation in Clinton High School, being one of the High Schools of Clinton, Tennessee. Pursuant to said order, the school officials of Anderson County ordered integration of the races in the school, to become effective at the beginning of the Fall term 1956. Integration of the races was put into effect by the administrative officials and teachers of the school. The Government charged that notwithstanding official compliance with the court's order of January 4, 1956, opposition from others than the said officials and teachers arose, aimed at preventing the effectiveness of integration and restoration of the school as a segregated school. On petition of D. J. Brittain, Jr., and others, the court on August 29, 1956, issued a temporary restraining order against one John Kasper and others enjoining and restraining them, their agents, servants, representatives, attorneys and all other persons who were acting or who may act or have acted in concert with them "from further hindering, obstructing, or in any wise interfering with the carrying out" of the integration order of January 4, 1956 (R26a). Thereafter said restraining order was, on August 31, 1956, continued in effect until September 6, 1956, at 1:00 P. M. (R29a).

and on September 6, 1956, said temporary restraining order was made permanent (R29a-30a). Thereafter on December 5, 1956, an order of attachment was issued by the court charging that certain individuals, named therein, but not including any of the appellants, had committed acts of criminal contempt charged in said order and ordering that said persons, not including any of the appellants, be attached for contempt (R19a).

Thereafter on February 25, 1957, the court, in chambers and without notice to any of the appellants issued an amended order of attachment (R22a) charging that the present appellants and others had notice of the permanent injunction of September 6, 1956, and that the present appellants and others had, during the months of November and December 1956, entered into an agreement or agreements to violate and to cause others to violate the injunction and that these appellants and others in active concert and participation with Frederick John Kasper "have violated the permanent injunction" in the respects set out in said amended order (R22a).

Appellants were thereafter arrested and entered into bond respectively for their appearance.

On June 11, 1957, prior to the trial, defendants requested the production of all statements and other matter bearing on the testimony which might be given by Government witnesses (R9a). On June 21, 1957, the Court denied this request (R9a). The request was again renewed at the trial and the Court there ruled that the defendants would be entitled only to statements of a

witness produced by the Government after the witness had testified and then only after the statements had first been given to the Court and the Court had deleted from the statement any portion thereof which it felt was not relevant or might be prejudicial (R31a). Counsel for defendants vigorously protested (R32a).

On the trial, Judge Taylor stipulated into the record that he was responsible for having distributed to the jury panel "A Handbook for Petit Jurors Serving in the United States District Court" (R82a). The practice of distributing this handbook to each juror as called was followed and the handbooks were delivered to the members of this jury (R83a). The handbook was introduced in evidence as Exhibit No. 1 (R85a). It appears printed in full in the appendix (R69a). Madge Hooks, Deputy Clerk, distributed the handbook to the members of the jury panel (R85a). Juror Thomas F. Linderman received one of the handbooks (R88a) and read it (R89a) and assumed that its purpose was to inform him as to his duties as a juror (R89a). Juror Oscar Beeker received a copy of the booklet (R90a) and read it (R90a). He understood its purpose was to inform him as to his duties as a juror (R91a). Mrs. Jessie Burnett, a juror, received a copy of it and read it (R92a). She assumed it was instructing her as to her duties as a juror (R92a). Juror W. E. Coker received a copy (R93a) and read it (R93a) and assumed it to be instructing him as to his duties as a juror (R95a). He considered it described the duties of jurors (R95a). Juror A. S. Bartlett received the booklet and read "a few points of law that was in it" (R97a). Mrs. Margaret

M. Whaley, juror, received the booklet (R98a) and read part of it (R98a). Juror Dana F. Phipps received a copy of it and read part of it (R99a-100a). Juror James Ruth received a copy and read it and considered the booklet was giving instructions to the jurors (R100a-101a). Juror George W. Cruze received the booklet and read part of it (R102a). Juror Herbert F. Hartman received the booklet and read part of it and considered its purpose was "to learn a man how to conduct himself as a juror" (R103a). Byron Pope, the Clerk of the Court, testified that the Clerk's office distributed the booklet to each of the jurors (R123a).

The defendants requested an instruction to the effect that the Government, in the amended order of attachment, had charged that the fifteen defendants had entered into an agreement or agreements with Kasper during the months of November and December 1956, and that the law required the Government to prove such agreement or agreements beyond a reasonable doubt. The requested instruction is printed in full in the appendix (R56a). It was refused by the Court.

The fifteen defendants requested an instruction to the jury to the effect that the Government having failed to call as witnesses the real parties in interest, the negro students, the jury could properly conclude that their testimony, if called, would be unfavorable to the interests of the Government in the case. This instruction was refused (R57a).

The questions raised on this appeal relate to certain rulings and orders of the court and objections to the charge to the jury. We proceed now to acquaint the Court with these questions.

In Grounds IV, V and XII of the motion for new trial (R59a, 63a), it was contended by appellants that the court erred in permitting the United States to intervene in this matter and change the offense charged from one of violating an injunction by commission of alleged specific acts into one of entering into alleged agreements with Frederick John Kasper to violate the injunction and enumerating new and different acts from those alleged in the original attachment and all without notice to appellants or their co-defendants and without opportunity to be heard in opposition thereto, and then proceeding on said amended attachment as an original proceeding and abandoning the original attachment, thereby changing the cause of action without notice.

In Ground VI of the motion for new trial (R60a), error was charged in the Court's refusal to attorneys for appellants to inspect and examine the complete reports made by witnesses for the prosecution to representatives of the United States in connection with matters covered in this case, thereby depriving appellants of an opportunity of full and complete cross examination of the government's witnesses.

In Ground VII of the motion for a new trial, appellants charged that the Court committed reversible error in

refusing to instruct the jury (R60a) to the effect that the amended order of attachment (R60a) charged the appellants with making agreement or agreements in November and December 1956 to violate the injunction (though they were not so charged until the amended order of attachment was issued until February 25, 1957) (R60a), and the Government having so charged it became the duty of the Government to prove the same beyond a reasonable doubt and to a moral certainty.

In Ground XIII of the motion for a new trial, appellants charged that the trial court committed reversible error in charging the jury that Rev. Turner's action was a "good deed" in the face of appellants' contention that it was a bad deed and was a question of fact for the jury to determine as to whether it was good or bad (R63a).

In Ground XVIII of the motion for a new trial, appellants charged that the trial court committed reversible error in refusing to charge the jury that the real parties in interest (negro students) not having been called by the government to testify, the jury could properly conclude that their testimony, if given, would have been unfavorable to the interest of the government (R64a).

In Ground XXI of the motion for a new trial, appellants charged that the trial court committed reversible error in allowing or permitting the Clerk to issue to each member of the jury panel a pamphlet entitled "Handbook For Jurors Serving in the U. S. District Courts" (R65a) in that said booklet alters the statutory manner of electing jurors, supplements the instructions

of the court, contrary to law, denies to the defendant his constitutional right under the Sixth Amendment to be represented by counsel with right to object to instructions given to the jury; and the booklet contains erroneous information and numerous inaccuracies and its use declared to be reversible error by the Circuit Court of Appeals for the Seventh Circuit.

The trial court ruled against the appellants on each of the above grounds assigned as error and entered an order overruling the motion for a new trial (R159a).

The court sentenced Lawrence Brantley, Alonzo Bullock and Clyde Cook each to two years probation; Mary Nell Currier to twelve months probation; and W. H. Till and William Brakebill each to fifteen months probation (docket entries, R14a). The appellants have appealed to this Court from said conviction and sentence.

The trial court from time to time instructed the jurors to refrain from watching television shows, having any reference to this trial.

On July 18, 1957, this trial was in progress. At the same time, a heated debate was in progress in the United States Senate on the so-called "Civil Rights Bill", and great public interest was aroused over the issue "Can a Southern Jury be depended upon to convict in a civil rights case?" On that date while this trial was in progress and while Juror Powell May was actually sitting and serving as a juror on the trial of this case, the "Dave Garroway Program" on television (R108a)

had a skit of about five minutes' duration on the theme "Can a Southern Jury be depended upon to convict in a civil rights case?"; and Jury May was told by a neighbor's wife, Mrs. Ray Carroll Jones, that her husband, Ray Carroll Jones, was going to be on the program and invited Juror May over to her house to look at it. Juror May went to the Jones home and saw the whole of it (R109a,110a). Pastor Trentham of the First Baptist Church, of which Juror May was a member and regular attendant, was also on the program (R109a). They showed on the screen a picture of the Powell May home taken from the home of Ray Carroll Jones. According to Juror May, the television announcer then said: "'We have in the news this morning one of the jurors who has been selected at random.'—I recall that remark. 'As selected at random from the jurors who will hear the Clinton integration case. Mr. Powell May of Knoxville, Tennessee. And here is one of his acquaintances and neighbors who will tell us something about him.'" (R114a).

Further quoting the record of the testimony of Juror May (R114a):

> "It went on something like that, and then Mr. Jones appeared on the film and was interviewed by this announcer, the identity of whom I am not familiar with."
>
> By the Court:
>
> "Q. What did Mr. Jones say so far as you can remember about you?
>
> "A. Well, he questioned Mr. Jones. He said, 'How long have you known Mr. May?' And the usual

questions of that nature. And he said, 'Approximately three years, or two years.' And, 'Well, what kind of a neighbor is he?'

"'Well, he is a good neighbor, cooperative and (72) friendly, and I like him,' and so forth and so on.

"And there was half a dozen questions of that nature concerning me as an individual.

"'Well,' he says, 'do you think he will render an honest decision in the case that he is hearing?'

"Jones says, 'I don't think there is any doubt about that'—or words to that effect. 'I think he can be depended on to say what he thinks is really correct.'

"With that that portion of the interview ended, and then it proceeded from that, I believe, to Dr. Trentham, and he was asked about the same kind of questions except not as a neighbor but as a pastor of the church.

"'How long have you known Mr. May?'

"'Well, three years or four years, something like that, and I know him as a member of my congregation.'

"'Well, what do you think of Mr. May as a citizen and discharging his duties on the jury in this Clinton case?'

"He said, 'Well, I think Mr. May is a christian gentleman and I expect him to render an honest and straightforward decision regardless of the consequences.'

"And I think that was the gist of what Mr. Trentham had to say."

CONTENTIONS IN SUPPORT OF PETITION.

Petitioners show that a writ of certiorari should be granted in this case for the reason that the Court of Appeals for the Sixth Circuit has rendered a decision in conflict with the decisions of other courts of appeals on the same matter, and also has decided an important question of Federal law in regard to the jurors' handbook which has not been but should be settled by this Court and has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by the lower court as to call for an exercise of this Court's power of supervision under the provisions of Rule 19(b) of the rules of this Court. This will be shown in the presentation of the following questions for decision in this case.

A—QUESTION I. Was it not reversible error for the trial court to amend the original order of attachment charging certain named individuals with specific acts violative of the alleged injunction into an order of attachment charging these and other defendants with criminal contempt, thereby changing the cause of action without notice to any of the defendants?

The Court of Appeals decided this question in the negative and in so doing probably ruled adversely to the holding in *United States v. Personal Finance Co. of New York*, 13 F.R.D. 306 (1952).

B—QUESTION II. Was it not reversible error for the Court to refuse to counsel for defendants under the

Jencks case prior to trial on request the right to the production of all statements of witnesses bearing on testimony which might be given by Government witnesses?

The Court of Appeals decided this question in the negative and in so doing probably conflicted with the decision in *Jencks v. United States*, 353 U.S. 657, 77 S. Ct. 1007; and *United States v. Hall*, 26 U.S.L.W. 2060 (U.S.D.C.W.Ky.).

C—QUESTION III. Was it not reversible error for the Court to refuse to instruct the jury to the effect that the Government, having alleged an agreement or agreements between Kasper and each of the other defendants during the months of November and December 1956, was required by law to prove said agreement or agreement beyond a reasonable doubt and to a moral certainty?

The Court of Appeals decided this question in the negative, and in so doing probably brought its decision in conflict with *Asgill, et al. v. United States*, (CCA Va.), 60 F. 2d 780; *United States v. Saglietto*, 41 F. Supp. 21; *United States v. Armour & Co.*, 48 F. Supp. 801; and *Weinstein v. United States*, 11 F. 2d 505.

D—QUESTION IV. Was it not reversible error for the lower court to instruct the jury that Rev. Turner's action was a "good deed" in the face of defendants' contention that it was a bad deed, and when that question of fact was an issue for the jury to decide?

The Court of Appeals decided this question in the negative and in so doing probably brought the decision in conflict with *Lotteakos v. United States*, 66 S. Ct. 1239, 328 U. S. 750, 90 L. Ed. 1557; *United States v. Curzio*, 170 F. 2d 354; *O'Shaughnessy v. United States*, 17 F. 2d 225; *Kolp v. United States*, 2 F. 2d 953.

E—QUESTION V. Was it not reversible error for the lower court to refuse to instruct the jury to the effect that the real parties in interest, the Negro students, not having been called by the Government to testify, the jury could properly conclude that their testimony would have been unfavorable to the interest of the Government?

The Court of Appeals decided this question in the negative, and in so doing probably brought its decision in conflict with *Milton v. United States*, 110 F. 2d 556, 71 App. D. C. 394; and *Clayton v. United States*, 152 F. 2d 402.

F—QUESTION VI. Was it not prejudicial and reversible error for the lower court to allow or permit the Court Clerk to issue to each member of the jury panel a pamphlet entitled "Handbook For Jurors Serving in the United States District Courts"?

This question was decided in the negative by the Court of Appeals, and in so doing it brought the decision in probable conflict with the provisions of the Sixth Amendment to the United States Constitution guaranteeing the right of representation by counsel to object to instructions, and was also in probable conflict with

the decisions in *Gadsden v. United States*, 233 F. 2d 626; *Powell v. Alabama*, 287 U. S. 45, 77 L.Ed. 158, 53 S. Ct. 55; *Fillippon v. Albion Vein Slate Co.*, 250 U. S. 76, 39 S. Ct. 435, 63 L. Ed. 582.

G—QUESTION VII. Was it not reversible error for the Court to hold that the evidence did not show that the jury was tampered with?

The Court of Appeals answered this question in the negative, and in so doing probably brought its decision in conflict with the decisions in *State v. Daniel*, 80 S. Ct. 368, 61 SE 1073, holding that the lack of an objection to an introduction of Juror May's testimony that his mind was not influenced by the extraneous matter must not be accepted as proof that his mind was not so influenced, and the failure to object to the introduction of this evidence does not render the evidence competent as proof of the fact that his mind was not so influenced.

In addition, the decision is in probable conflict with the decision of this Court in *Mattox v. United States*, 13 S. Ct. Rep. 50, 146 U. S. 140, 36 L.Ed. 917; *Remmer v. United States*, 74 S. Ct. 450, 347 U. S. 227, 98 L. Ed. .....; and the decision of the Court of Appeals for the Eighth Circuit in *Wheaton v. United States*, 133 F. 522.

H—QUESTION VIII. Did the Court not err in failing to pass upon the question of whether or not the injunction which these petitioners allegedly violated is repugnant and violative of the First Amendment of the United States Constitution?

The Court did not pass upon the question raised as to the injunction being so broadly worded that it is void on its face and is violative of the First Amendment. In other words, if this injunction is valid, then it is quite probable that freedom of speech is dead, particularly with respect to the integration issue pertaining to the High School in Clinton, Tennessee.

I—QUESTION IX. Did the Court not err in holding that it had jurisdiction over the alleged co-conspirators and jurisdiction to convict them?

The record in this case shows that these petitioners did not have any actual knowledge of the injunction. They had only constructive knowledge at best and constructive knowledge has no place in criminal law.

CONCLUSION.

For all of the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals is manifestly erroneous, and this Honorable Court should exercise its discretionary powers to correct the errors herein complained of and overrule the judgment of the District Court. The petition for certiorari should, therefore, be granted.

Respectfully submitted,

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